



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

March 21, 2024

Via e-mail only to: [content redacted]

Andrew W. Brockman, Esq.
Associate General Counsel
Office of General Counsel
Office # WA 103
Central Michigan University
Mount Pleasant, Michigan 48859

Re: OCR Docket No. 15-22-2017

Dear Mr. Brockman:

This letter is to notify you of the disposition of the above-referenced complaint filed on November 11, 2021, with the U.S. Department of Education, Office for Civil Rights (OCR), against Central Michigan University (the University) alleging that the University discriminated against a student (the Student) based on race in [content redacted], when a [content redacted] made [content redacted] reports about the Student and the University did not appropriately investigate the underlying incidents or the subsequent complaint to the University's civil rights office.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of federal financial assistance. As a recipient of federal financial assistance from the Department of Education, the University is subject to this law.

During its investigation to date, OCR reviewed information provided by the Complainant and the University, and interviewed the Complainant, the Student, and University employees. OCR reviewed the University's policies and procedures and case files, which included but were not limited to the incident reports themselves, photographs, investigator and other staff member notes, interview summaries, and internal and external correspondence. Before OCR completed its investigation, the University expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

Summary of Investigation

The Student was a [content redacted] student at the University during the [content redacted] academic year. [sentence redacted].

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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Student Conduct Incident Reports and Investigation

The Student [content redacted] was the subject of [content redacted] incident reports during the [content redacted], involving alleged interactions with a [content redacted]. During the [content redacted] incident, [content redacted], the Student was accused of [content redacted] at the [content redacted] when she told him [content redacted]. [content redacted], the Student was accused of being one of several residents [content redacted] making “several comments [content redacted] that were directed at [content redacted] staff. Staff reported that the residents [sentence redacted].”

After the [content redacted] incident, the Student was charged with the following alleged violations of the Code of Student Rights, Responsibilities, and Disciplinary Procedures (the Code): 3.2.7 Threat/Endangerment/Assault; 3.2.19 Bullying/Hazing/Harassment; 3.2.31 Violation of University Regulations. Due to the “severity” of the allegations against him, the Student was required to [content redacted]. [sentence redacted].

The [content redacted] said [content redacted] could be an appropriate consequence when there is a concern for safety. He said they determined the Student should be [content redacted] because they were concerned with safety because of the [content redacted] reports and [content redacted] to staff, and with the alleged [content redacted] being directed at [content redacted]. The [content redacted] said, however, that after meeting with the Student, they decided not to [content redacted]but [content redacted] that are part of University [content redacted]. The [content redacted] noted that the Student was [content redacted]. [sentence redacted].

OCR reviewed e-mails between the Office of Student Conduct and the Office of Residence Life concerning the implementation of the Student’s interim sanctions [content redacted]. [sentence redacted].

[paragraph redacted]

Regarding the investigation of the incidents, the Student had a meeting with the [content redacted] on [content redacted]. University files included a description of the meeting, which states that the incident report was read to the Student and he was advised of the conduct process and the purpose of the meeting. The Student denied [content redacted]. [sentence redacted]. [sentence redacted]. [sentence redacted].

The [content redacted] spoke with [content redacted] other students [content redacted]. [content redacted] the investigation was closed [content redacted].

The [content redacted] said Student Conduct has discretion to close a case if [content redacted]. [sentence redacted]. [sentence redacted]. [sentence redacted].”

The [content redacted] said, typically, interim measures/sanctions remain in place pending the outcome of the investigation and he believed the Student understood that the sanctions would stay in place while the investigation was open. [sentence redacted]. [sentence redacted]. [sentence redacted]. [sentenceredacted].

Office of Civil Rights and Institutional Equity

The Complainant alleged that she reached out to the University's Office of Civil Rights and Institutional Equity (OCRIE) in [content redacted] and submitted a complaint [content redacted], as she was instructed by OCRIE. The Student said he also made a report to OCRIE. The University provided OCR with the following incident description for the Student on [content redacted]:

[paragraph redacted]¹.

The [content redacted] said this incident report was marked as a bias incident, so it was routed to OCRIE. He said neither [content redacted] were interviewed by Student Conduct for this report, as it would have been OCRIE's responsibility. When asked what University protocol is for when there is a Student Conduct incident with a simultaneous, related complaint filed with OCRIE, the [content redacted] said, unless OCRIE instructs them to hold off, they will move forward with the conduct process.

The Complainant said she was told [content redacted], that OCRIE would investigate and it would take a week. The Student said he had a meeting with OCRIE in [content redacted] and informed them of the situation [content redacted], and they said they would investigate. He alleged that he did not hear back from OCRIE after the meeting.

The [content redacted] of OCRIE explained that the office takes inquiries/intake in any form. Once they receive notice of a concern, they reach out to the impacted individual to meet with them. At the first meeting, they advise individuals of their rights (e.g., right to file a formal complaint), talk through their options, and make sure they have support and resources to be as successful as possible. Depending on the complainant, if they want to engage in filing a formal complaint, they explain it needs to be in writing, and they offer to assist to make sure they have what needs to be in the complaint (e.g., name the respondent and enough information to meet the prima facie threshold that something did occur). The [content redacted] said, if they receive a formal complaint, they evaluate it to make sure it meets the threshold to move forward. The [content redacted] said the investigation process begins with the written formal complaint.

When asked to describe University protocol for when there is a Student Conduct incident and a simultaneous or related complaint filed with OCRIE, the [content redacted] said protocol speaks to this as "alternate student process." She said the protocol is that they would hold an investigation in abeyance until the other process is complete. Supportive measures can and do move forward.

The [content redacted] sent an e-mail to the [content redacted] on [content redacted], stating that they were reaching out to the Student to request a meeting to discuss the alleged race discrimination he reported. Another OCRIE staff member sent an e-mail to the Student the same day introducing herself, explaining the responsibilities of OCRIE, and stating that they had

¹ During the course of this investigation, OCR learned that, in the Student's [content redacted] race discrimination complaint to OCRIE, he stated that the [content redacted] him and used a [content redacted] to intimidate him. Based on OCR's investigation to date, the details the Student provided to the University in his written statement (set forth above) did not include a [content redacted].

“recently been made aware of [his] bias concern.” She then requested a meeting between the Student and the [content redacted]. The Student attended a [content redacted] meeting with the [content redacted] and an OCRIE investigator [content redacted].

[sentence redacted]. [sentence redacted]. [sentence redacted]. [sentence redacted]. [sentence redacted]. When asked if it was explained to him that he would need to file a formal complaint for OCRIE to proceed with an investigation, the [content redacted] said “yes.” [sentence redacted]. [sentence redacted]. [sentence redacted]. [sentence redacted].

When asked why the Student’s race-based allegations could not be addressed by OCRIE while Student Conduct was investigating the incident reports, the [content redacted] said the Student’s claim was that [content redacted] filed a [content redacted] a complaint against him and was targeting him because of his [content redacted]. [sentence redacted]. [sentence redacted]. The [content redacted] said they were limited on what they could investigate based on the facts provided by the Student and they also did not want to interfere with the Student Conduct process. She said OCRIE did not interview any other students, including [content redacted], in relation to the Student’s complaint.

The [content redacted] stated they considered the concerns raised by the Student and the Complainant as an inquiry working to get a formal complaint. She said they tried to get more information, including a formal written complaint from the Student, but the Student stopped communicating with them and did not engage any further after [content redacted]. She said OCRIE did speak with Student Conduct to get additional information [content redacted]. She said they gathered as much information as they could but, per the last communication from the Student, they were limited in their ability to investigate further and never had a formal written complaint. As described in more detail below, OCR’s review of the University’s records provided to date showed no indication of attempts to follow up with the Student until [content redacted].

[paragraph redacted]

[paragraph redacted]

[paragraph redacted].

OCRIE closed the Student’s complaint in [content redacted]. When asked if OCRIE’s closure was affected by Student Conduct’s closure of its investigation, the [content redacted] said “no.” She stated, in general, reports are closed by OCRIE if [content redacted]. She said they never had a formal complaint from the Student and [content redacted], so they closed it. [sentence redacted]. [sentence redacted]. [sentence redacted].

The Student and the Complainant said no one at the University had a discussion with them about the closure of the OCRIE investigation; the last contact either one of them had with Student Conduct or OCRIE was the e-mail in [content redacted] informing them that the incident reports were closed.

Legal Standard

Based on the complaint allegation, OCR investigated the following issue to determine whether the University discriminated against the Student on the basis of race: whether the University, on the ground of race, color, or national origin, denied a student any service or benefit provided under its program; provided the student services or benefits that were different from or provided in a different manner from services or benefits provided to other students; restricted the student in the enjoyment of any privilege or advantage enjoyed by others; and/or treated the student differently from others in determining whether the student satisfied any requirement or condition which individuals must meet in order to be provided any service or other benefit under the program, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3(b)(1)(i), (ii), (iv), and/or (v).

Evidence of discriminatory intent may be direct or circumstantial. Absent direct evidence of discriminatory motive, in determining whether a recipient subjected a student to different treatment on the basis of race, color, or national origin in violation of Title VI, OCR looks to whether there were any apparent differences in the treatment of similarly-situated individuals on the basis of race, color, or national origin. If so, OCR assesses any recipient explanation for any differences in the treatment of similarly-situated students to determine whether the reasons articulated are legitimate or are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the students in a manner that is consistent with its established policies and procedures and whether there is any other evidence of discrimination based on race, color, or national origin.

Conclusion

Based upon information obtained to date, OCR has concern as to the severity of the interim sanctions put in place after the [content redacted] incident (e.g., [content redacted]) considering the facts presented and whether that could be attributed to the Student's race.

The University said the interim sanctions were tied to the Student [content redacted] and were implemented for safety reasons for [content redacted], but the facts presented to the University when the investigation was open did not specifically attribute [content redacted] to the Student. The University had evidence that the [content redacted], and had been happening before the incidents involving the Student; however, the evidence obtained to date did not show the University was taking actions to address the safety concern prior or subsequent to implementing sanctions against the Student, with respect to [content redacted]. [content redacted].

OCR also notes concern regarding the OCRIE process and whether it should have proceeded, at least in part, while the Student Conduct investigation was taking place. The Student's concerns included a report that [content redacted] targeted him, [content redacted]. Additional concern is noted regarding whether the Student was aware that OCRIE would close his complaint/concerns without a formal written complaint and/or additional information and whether those procedures were onerous. The OCRIE procedures refer to a written complaint—the Student and the Complainant submitted concerns in writing. The [content redacted] said the need for a formal complaint and additional information was explained to the Student and the Complainant; they said it was not.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the University expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On March 2, 2022, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the University's first monitoring report by April 30, 2024. For questions about implementation of the Agreement, please contact Ms. Erin Barker-Brown, who will be overseeing the monitoring and can be reached by telephone at (202) 987-1842 or by e-mail at Erin.Barker-Brown@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640.

Sincerely,

/s/

Sacara Miller
Team Leader

Enclosure